

IT 02-2

Tax Type: Income Tax

Issue: Reasonable Cause on Application of Penalties

**STATE OF ILLINOIS  
DEPARTMENT OF REVENUE  
OFFICE OF ADMINISTRATIVE HEARINGS  
CHICAGO, ILLINOIS**

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**THE DEPARTMENT OF REVENUE  
OF THE STATE OF ILLINOIS**

v.

**ABC, INC.,**

Taxpayer

No. 01-IT-0000  
FEIN: 00-0000000  
TYE: 12/31/99

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**RECOMMENDATION FOR DISPOSITION**

**Appearances:** Deborah H. Mayer, Special Assistant Attorney General on behalf of the Illinois Department of Revenue.

**SYNOPSIS:**

This matter arose following the protest of a Notice of Denial issued by the Illinois Department of Revenue ("Department") on March 12, 2001 to ABC, Inc. ("taxpayer") for the tax year ending December 31, 1999. Taxpayer filed a claim for refund alleging that

the penalty assessed under Uniform Penalty and Interest Act § 3-3(b)<sup>1</sup> should be abated due to reasonable cause. After a thorough review of the record, it is my recommendation that the penalty should be abated and the claim for refund should be granted.

**FINDINGS OF FACT:**

1. The Department issued a Notice of Denial on March 12, 2001 to ABC for the tax year ending December 31, 1999. Dept. Ex. No. 1.
2. John Doe was the president of ABC during the tax year. John Doe's wife, Jane Doe, was the sole shareholder. Tr. p. 6.
3. ABC's C.P.A., Joe Blow ("Blow"), prepared the 1999 corporate tax return. This accountant prepared the Does' 1999 personal income tax return as well. Tr. p. 6.
4. As part of their normal business practice in prior years, the Does reviewed the tax return and the supporting documentation submitted to them by Blow. Tr. p. 7.
5. Blow filed a timely U.S. Form 7004, Application for Automatic Extension of Time to File Corporation Income Tax Return, for the 1999 tax year. Tr. p. 16; Taxpayer Ex. No 6. Blow filed the extension to file the corporate income tax return due to his continuing health problems. Tr. p. 10; Taxpayer Ex. No. 3.
6. Although Blow filed an extension to file the corporate income tax return, he failed to calculate the tentative tax due for 1999 as required. Taxpayer Ex. No. 6. Blow did not advise the Does that ABC had a tax liability for the 1999 tax year and needed to pay such tax by the original due date despite the corporation's extension of the date by which it must file the tax return. Tr. p. 10.

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<sup>1</sup> 35 ILCS 735/3-3(b)

### **CONCLUSIONS OF LAW:**

Taxpayer has protested the Notice of Denial for the tax year ending December 31, 1999 alleging that the penalties assessed against it should be abated due to reasonable cause under Section 3-9 of the Uniform Penalty and Interest Act, 35 ILCS 735/3-9. A determination as to whether reasonable cause exists must be made on a case by case basis taking into account all of the facts and circumstances. 86 Admin. Code ch. I, Sec. 700.400(b). Section 700.400(b) indicates that it must be determined to what extent the taxpayer made a good faith effort to determine the correct tax liability and subsection (c) provides that a taxpayer is considered to have made a good faith effort if he uses ordinary business care and prudence. Factors which are considered in determining whether the taxpayer exercised ordinary business care and prudence are the clarity of the law and its interpretation, and the taxpayer's education, experience and knowledge. *Id.* Further, depending on the facts and circumstances of the case, reliance on the advice of a tax professional may establish that taxpayer exercised ordinary business care and prudence and justify an abatement of penalty. 86 Ill. Admin. Code ch. I, sec. 700.400(c).

In the instant matter, the president of ABC testified that he retained Joe Blow, a C.P.A., to prepare the 1999 corporate tax return. In the past, the C.P.A. provided him the prepared tax returns, supporting schedules and documentation which the Does reviewed before signing. For the 1999 tax year, however, Blow, had to file an extension to file the corporate tax return due to his continuing health problems. Although Blow timely filed the extension he neglected to calculate the corporation's tentative tax due. This calculation is required since only the filing due date is extended and any tax due is due on the original due date. Taxpayer Ex. No. 6. Further, the C.P.A. never advised the Does

that the corporation had a tax liability for 1999 and that payment was required by March 15, 2000 despite the extension to file. Taxpayer Ex. No. 6; Tr. p. 10.

The testimony and documentary evidence in this matter demonstrate that the Does routinely reviewed their C.P.A.'s performance and preparation of the corporate tax returns when filing in prior years. The Does knew that their C.P.A. filed an extension to file and based upon his advice were satisfied that their obligation to the Department with regards to the 1999 tax year was being met. The C.P.A. did not properly calculate the tentative tax due when filing the extension as required and it was this failure to pay timely that resulted in the penalty imposed by the Department.

Thus, after reviewing the record in this matter, I conclude that the taxpayer exercised ordinary business care and prudence in this matter and reasonably relied upon the advice and experience of their C.P.A. Accordingly, the penalty imposed for the 1999 tax year should be abated due to reasonable cause and the claim for refund should be granted.

Date: January 3, 2002

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Christine O'Donoghue  
Administrative Law Judge